



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 162 3128]

Moonlight Slumber, LLC; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before October 30, 2017.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write: "In the Matter of Moonlight Slumber, LLC, File No. 1623128" on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/moonlightslumberconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write "In the Matter of Moonlight Slumber, LLC, File No. 1623128" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street,

SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Amanda Kostner (202-326-2880) and Jock Chung (202-326-2984), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 28, 2017), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 30, 2017. Write “In the Matter of Moonlight Slumber, LLC, File No. 1623128” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/moonlightslumberconsent> by following the

instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “In the Matter of Moonlight Slumber, LLC, File No. 1623128” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC. 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively

sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 30, 2017. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Moonlight Slumber, LLC (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves the deceptive environmental and health claims respondent made regarding its baby mattresses. According to the FTC complaint, respondent made unsubstantiated representations that its mattresses are organic, natural, or plant-based and that its mattresses will not emit any substance, including volatile organic compounds, or off gas; claimed that testing proved that its mattresses do not emit volatile organic compounds; and represented that its mattresses have been certified by Green Safety Shield, yet failed to disclose that it has a material connection to the Green Safety Shield seal. Consumers likely interpret such seals as a claim that an independent third party certified the product. The complaint alleges that all of these claims are deceptive in violation of Section 5(a) of the FTC Act.

The proposed consent order contains five provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I prohibits misleading representations regarding whether any mattress, blanket, pillow, pad, foam-containing product, or sleep-related product is organic, natural, or plant-based; regarding

the emissions from such product; and regarding the general environmental and health benefits of such product. The order requires respondent to possess competent and reliable evidence, including scientific evidence when appropriate, to substantiate these representations.

Part II prohibits misleading representations regarding emissions-free and VOC-free claims. The order requires competent and reliable scientific evidence to substantiate that a product does not emit more than a trace level of emissions of the substance about which the claim is made. The order defines “emission” to include all emissions (not just VOCs that cause smog). This definition reflects the Commission’s Enforcement Policy Statement and consumer expectations: consumers are likely concerned about the potential health effects from exposure to chemical emissions found in indoor air, not just VOCs that affect outdoor air quality. Consistent with the Green Guides, the order defines “trace level of emissions” for claims for a substance to mean that (1) emissions of the substance do not result in inhalation concentrations of that substance higher than background levels in the typical residential home; (2) emissions of the substance do not cause material harm that consumers typically associate with that substance, including harm to the environment or human health; and (3) the substance has not been added intentionally to the covered product.

Part III prohibits respondent from misrepresenting the results of any tests or studies, or from misrepresenting that any product benefit is scientifically or clinically proven. Parts IV and V prohibit respondent from misrepresenting certifications or failing to adequately disclose a material connection to a party making a representation, e.g., an endorser.

Parts VI through X are reporting and compliance provisions. Part VI mandates that respondent acknowledge receipt of the order, distribute the order to certain employees and agents, and secure acknowledgments from recipients of the order. Part VII requires that respondent submit compliance reports to the FTC within ninety (90) days of the order's issuance and submit additional reports when certain events occur. Part VIII requires that respondent create and retain certain records for five (5) years. Part IX provides for the FTC's continued compliance monitoring of respondent's activity during the order's effective dates. Part X is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2017-21289 Filed: 10/3/2017 8:45 am; Publication Date: 10/4/2017]